

EXTENSIONS OF REMARKS

POCKET-VETO POWERS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 2008

Ms. PELOSI. Madam Speaker, I submit for the RECORD a copy of a letter signed jointly by myself and the Republican Leader, Mr. BOEHNER. It is addressed to President Bush. In it, we express our views on the limits of the "pocket-veto" power. I also submit a copy of the letters referenced therein.

CONGRESS OF THE UNITED STATES,
Washington, DC, April 14, 2008.

Hon. GEORGE W. BUSH,
The President, The White House,
Washington, DC.

DEAR MR. PRESIDENT: This is in response to your actions of December 28, 2007, on H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, which you returned to the House of Representatives without your approval. In returning the parchment you transmitted a memorandum of disapproval stating your objections to enactment of the bill. This memorandum of disapproval included the following paragraph:

"The adjournment of the Congress has prevented my return of H.R. 1585 within the meaning of Article I, section 7, clause 2 of the Constitution. Accordingly, my withholding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to 'pocket veto' bills during an adjournment of the Congress, I am also sending H.R. 1585 to the Clerk of the House of Representatives, along with this memorandum setting forth my objections, to avoid unnecessary litigation about the non-enactment of the bill that results from my withholding approval and to leave no doubt that the bill is being vetoed."

The circumstances surrounding the presentment and return of H.R. 1585 and the readiness of Congress to reconsider the bill in light of Presidential objections compel us to question the assertion that a pocket veto did or could have occurred. We think you agree that the pocket veto and the return veto are available on mutually exclusive bases and, therefore, during mutually exclusive periods. We think you should also agree that the constitutional concern that a bill not become law without the President's signature when an adjournment prevents a return veto does not arise when the President is able to return the parchment to the originating House with a statement of his objections. Accordingly, we believe that your return of H.R. 1585 with your objections is absolutely inconsistent with this most essential characteristic of a pocket veto, to wit: retention of the parchment by the President for lack of any body to whom he might return it with his objections. Your successful return of H.R. 1585 establishes that you were not prevented from returning it.

H.R. 1585 was presented to you on December 19, 2007. You returned the bill on December 28, 2007—the eighth of the ten days allowed under the Constitution. The Clerk was available pursuant to the standing rules of the House to receive your message. The Congress was in a position to reconsider the bill in light of Presidential objections, even in

the first session of the instant Congress. Although the House had adjourned sine die (without specifying a day of return), it did so with provision for its reassembly. Moreover, both houses were to reassemble in due course for a second session of the instant Congress.

After an enrolled bill is presented for Presidential approval, the parchment ultimately meets one of four ends. It might be tendered to the Archivist by the President because he signed it or allowed it to become law without his signature. It might be referred to committee by the first house to sustain a veto. It might be tendered to the Archivist by the second house to override a veto. Or it might be retained by the President because he "pocketed" it. If the President returns a parchment to the Congress, then he has not pocketed it, and it therefore is subject to reconsideration. Either the Congress has prevented the President from returning the parchment with a statement of his objections or it has not. By returning the parchment a President is admitting that he is not prevented from returning it.

The House has treated your message of December 28, 2007, on H.R. 1585 as a return veto. On January 15, 2008, the message—comprising the parchment and your memorandum of disapproval—was laid before the House. After the memorandum was read, your objections were entered in the Journal and the House obeyed the command of the Constitution to "proceed to reconsider" the bill. Rather than immediately considering the ultimate question on overriding or sustaining the veto, the House chose as its first mode of reconsideration a referral to committee.

We enclose for your consideration copies of previous letters to President George H. W. Bush and President Clinton, respectively dated November 21, 1989, and September 7, 2000. Those letters from Speaker Foley and Leader Michel and from Speaker Hastert and Leader Gephardt expressed the profound concern of the bipartisan leaderships over similar assertions of pocket vetoes. We echo those concerns and urge you to give appropriate deference to such judicial resolutions of this question as have been possible.

Thank you for your attention to this matter.

Best regards,

NANCY PELOSI,
Speaker of the House.
JOHN A. BOEHNER,
Republican Leader.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 7, 2000.

Hon. WILLIAM J. CLINTON,
The President, The White House,
Washington, DC.

DEAR MR. PRESIDENT: This is in response to your actions on H.R. 4810, the Marriage Tax Relief Reconciliation Act of 2000, and H.R. 8, the Death Tax Elimination Act of 2000. On August 5, 2000, you returned H.R. 4810 to the House of Representatives without your approval and with a message stating your objections to its enactment. On August 31, 2000, you returned H.R. 8 to the House of Representatives without your approval and with a message stating your objections to its enactment. In addition, however, in both cases you included near the end of your message the following:

Since the adjournment of the Congress has prevented my return of [the respective bill]

within the meaning of Article I, section 7, clause 2 of the Constitution, my withholding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to "pocket veto" bills during an adjournment of the Congress, to avoid litigation, I am also sending [the respective bill] to the House of Representatives with my objections, to leave no possible doubt that I have vetoed the measure.

President Bush similarly asserted a pocket-veto authority during an intersession adjournment with respect to H.R. 2712 of the 101st Congress but, by nevertheless returning the enrollment, similarly permitted the Congress to reconsider it in light of his objections, as contemplated by the Constitution. Your allusion to the existence of a pocket-veto power during even an intrasession adjournment continues to be most troubling. We find that assertion to be inconsistent with the return-veto that it accompanies. We also find that assertion to be inconsistent with your previous use of the return-veto under similar circumstances but without similar dictum concerning the pocket-veto. On January 9, 1996, you stated your disapproval of H.R. 4 of the 104th Congress and, on January 10, 1996—the tenth Constitutional day after its presentment—returned the bill to the Clerk of the House. At the time, the House stood adjourned to a date certain 12 days hence. Your message included no dictum concerning the pocket-veto.

We enclose a copy of a letter dated November 21, 1989, from Speaker Foley and Minority Leader Michel to President Bush. That letter expressed the profound concern of the bipartisan leaderships over the assertion of a pocket veto during an intrasession adjournment. That letter states in pertinent part that "[s]uccessive Presidential administrations since 1974 have, in accommodation of Kennedy v. Sampson, exercised the veto power during intrasession adjournments only by messages returning measures to the Congress." It also states our belief that it is not "constructive to resurrect constitutional controversies long considered as settled, especially without notice or consultation." The Congress, on numerous occasions, has reinforced the stance taken in that letter by including in certain resolutions of adjournment language affirming to the President the absence of "pocket veto" authority during adjournments between its first and second sessions. The House and the Senate continue to designate the Clerk of the House and the Secretary of the Senate, respectively, as their agents to receive messages from the President during periods of adjournment. Clause 2(h) of rule II, Rules of the House of Representatives; House Resolution 5, 106th Congress, January 6, 1999; the standing order of the Senate of January 6, 1999. In *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974), the court held that the "pocket veto" is not constitutionally available during an intrasession adjournment of the Congress if a congressional agent is appointed to receive veto messages from the President during such adjournment.

On these premises we find your assertion of a pocket veto power during an intrasession adjournment extremely troublesome. Such

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

assertions should be avoided, in appropriate deference to such judicial resolution of the question as has been possible within the bounds of justifiability.

Meanwhile, citing the precedent of January 23, 1990, relating to H.R. 2712 of the 101st Congress, the House yesterday treated both H.R. 4810 and H.R. 8 as having been returned to the originating House, their respective returns not having been prevented by an adjournment within the meaning of article I, section 7, clause 2 of the Constitution.

Sincerely,

J. DENNIS HASTERT,
Speaker.

RICHARD A. GEPHARDT,
Democratic Leader.

CONGRESS OF THE UNITED STATES,
Washington, DC, November 21, 1989.

Hon. GEORGE BUSH,
President of the United States, The White House, Washington, DC.

DEAR MR. PRESIDENT: This is in response to your action on House Joint Resolution 390. On August 16, 1989, you issued a memorandum of disapproval asserting that you would "prevent H.J. Res. 390 from becoming a law by withholding (your) signature from it." You did not return the bill to the House of Representatives.

House Joint Resolution 390 authorized a "hand enrollment" of H.R. 1278, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, by waiving the requirement that the bill be printed on parchment. The hand enrollment option was requested by the Department of the Treasury to insure that the mounting daily costs of the savings-and-loan crisis could be stemmed by the earliest practicable enactment of H.R. 1278. In the end, a hand enrollment was not necessary since the bill was printed on parchment in time to be presented to you in that form.

We appreciate your judgment that House Joint Resolution 390 was, in the end, unnecessary. We believe, however, that you should communicate any such veto by a message returning the resolution to the Congress since the intrasession pocket veto is constitutionally infirm.

In *Kennedy v. Sampson*, the United States Court of Appeals held that "pocket veto" is not constitutionally available during an intrasession adjournment of the Congress if a congressional agent is appointed to receive veto messages from the President during such adjournment. 511 F.2d 430 (D.C. Cir. 1974). In the standing rules of the House, the Clerk is duly authorized to receive messages from the President at any time that the House is not in session. (Clause 5, Rule III, Rules of the House of Representatives; House Resolution 5, 101st Congress, January 3, 1989.)

Successive Presidential administrations since 1974 have, in accommodation of *Kennedy v. Sampson*, exercised the veto power during intrasession adjournments only by messages returning measures to the Congress.

We therefore find your assertion of a pocket veto power during an intrasession adjournment extremely troublesome. We do not think it constructive to resurrect constitutional controversies long considered as settled, especially without notice of consultation. It is our hope that you might join us in urging the Archivist to assign a public law number to House Joint Resolution 390, and that you might eschew the notion of an intrasession pocket veto power, in appropriate deference to the judicial resolution of that question.

Sincerely,

THOMAS S. FOLEY,
Speaker.

ROBERT H. MICHEL,
Republican Leader.

ON THE BIRTH OF JUDAH CHRISTOPHER CALLAHAN

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 2008

Mr. WILSON of South Carolina. Madam Speaker, I am happy to congratulate Paul and Jenni Callahan on the birth of their new baby boy. Judah Christopher Callahan was born on September 30, 2008, weighing nine pounds. Judah joins an older sister, Charlotte. He has been born into a loving home, where he will be raised by parents who are devoted to his well-being and bright future.

His father, Paul, serves as senior legislative assistant in the office of the Second Congressional District of South Carolina.

I want to congratulate Judah's grandparents, Gerald and Madonna Callahan of Greenville, South Carolina, and Steve and Pam Crowe of Greenville, South Carolina. On behalf of my wife Roxanne, and our entire family, we want to wish Paul, Jenni, Charlotte, and Judah all the best.

RECOGNIZING OCTOBER AS BREAST CANCER AWARENESS MONTH

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 2008

Mr. DAVIS of Illinois. Madam Speaker, I wish to take a moment to recognize October as National Breast Cancer Awareness month. Excluding skin cancer, breast cancer is the most common cancer among women, accounting for more than 1 in 4 cancers diagnosed in women in the United States. Breast cancer incidence and death rates generally increase with age. White women have a higher incidence of breast cancer than African American women after the age of 40. In contrast, African American women have a higher incidence rate before the age of 40. Of great concern is the racial disparity that exists in terms of breast cancer outcomes. In the United States, African American women are 37 percent more likely to die from breast cancer than Caucasian women, with 5-year survival rates being 77 percent and 90 percent, respectively. This discrepancy is unacceptable.

Health disparities related to breast cancer exist primarily due to poor early detection of the cancer and limited access to high-quality treatment. A lack of health insurance usually is linked with one having a more advanced stage of cancer at the time of diagnosis. The presence of supplementary illnesses, lower socioeconomic status, unequal access to medical care, and disparities in treatment may contribute to the observed differences in survival between lower and higher income breast cancer patients, specifically between African American and white women.

Many institutions are taking the initiative to understand and address these disparities. I am proud that a hospital in my Congressional district has accepted this challenge. The Sinai Urban Health Institute is the largest private provider of charity care in the State of Illinois, and it has helped raise awareness and care

for breast cancer. Sinai recently completed a comprehensive epidemiological analysis of breast cancer mortality for African American and Caucasian women in Chicago. Strikingly, the study found that black women in Chicago had a 68 percent higher mortality rate of breast cancer than Caucasian women. Further, the study demonstrated that Caucasian women in Chicago had benefited from the incredible advancements in treatment over the past 2 decades, but that these treatment successes had no impact on the mortality rate for African American women. This report prompted the local health community to discuss solutions to the growing disparities. The experts involved centered their recommendations on three things: improve access to mammograms, the quality of mammograms, and the quality of breast cancer treatment. To do its part, Sinai developed a program to increase the access of low-income women to mammograms. I am impressed that Sinai's efforts resulted in an amazing increase in the number of mammograms conducted at Sinai. Specifically, the number of mammograms increased 60 percent from 2004 to 2007.

I also am pleased that this session I helped pass legislation to extend the authorization of the semipostal Breast Cancer Awareness stamp till 2011. Through the sale of this stamp, we are able to raise awareness of this disease and directly raise money for needed research. Sale of the Breast Cancer Semipostal stamp, first issued in 1998, has raised more than \$54 million for breast cancer research.

As policymakers, we must continue to work together to raise money, promote awareness, and advance treatment for a cancer that is devastating our communities.

EARMARK DECLARATION

HON. SHELLEY MOORE CAPITO

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 2008

Mrs. CAPITO. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information for publication in the CONGRESSIONAL RECORD regarding earmarks I received as part of H.R. 7110:

Requesting Member: SHELLEY MOORE CAPITO.

Account: RTDE Army.

Title: MATRIC-Project National Shield Integration Center.

Recipient: Keith A. Pauley, 3200 Kanawha Turnpike, Building 740, Suite 4300, South Charleston, WV 25314.

Summary: To establish a nationally integrated system-of-systems framework that can effectively protect the nation against terrorist attacks, etc.

Account: RTDE Defense Wide.

Title: Tactical Biometrics Operating and Surveillance System (TBOSS).

Recipient: STS International, 204 Sand Mine Road, PO Box 10, Berkeley Springs, WV 25411.